

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2334 OF 2017

Abdul Rehman Karimulla Shah .. Petitioner
versus
Rajesh S. Katkar, SDO & Ors. .. Respondents

Mr. R. D. Soni i/b. Ram & Co. for Petitioner.
Ms Geeta Shastri – Addl. G. P. for State.
Ms T. Puranik for Corporation.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 07 NOVEMBER 2017

P.C.:

1] Heard Mr. Soni for the petitioner. Ms Shastri, Addl. G.P. for the State and Ms Puranik for the respondent no. 2 – Corporation.

2] The challenge in this petition is to the award dated 23rd February 2017 (Exhibit 'G') made by the Sub Divisional Officer (Land Acquisition Officer) in respect of land bearing CTS No. 294, Deonar, Kurla, Mumbai.

3] Mr. Soni, learned counsel for the petitioner submits that the petitioner's father was in possession of property admeasuring 751.5 sq. meters forming part of CTS Nos. 294 and 295 Deonar, Kurla, Mumbai, which was leased to him by the erstwhile owners. Mr. Soni points out that the present petition pertains to area of 199.5 sq. meters from out of CTS No. 294, on which, petitioner's father, was carrying on the business as a scrap dealer under the name and style of Karimulla Scrap Mart since the year 1975.

4] Mr. Soni submits that even though there is documentary and other evidence to establish that the petitioner, after the demise of his father, is in physical possession of the property in question, the SDO, without issuance of any notice to the petitioner under section 9 of the Land Acquisition Act 1894 (1894 Act) or under the corresponding provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act) has proceeded to make the impugned award dated 23rd February 2017. Mr. Soni submits that the impugned award is in violation of the statutory provisions of the 1894 Act, 2013 Act as well as the principles of natural justice and fair play. Mr. Soni submits that the impugned award has the effect of depriving the petitioner of his property, save without the authority of law and thereby infringing Article 300A of the Constitution of India.

5] Ms Shastri, learned Addl. G. P. submits that there is no infirmity whatsoever in the impugned award. She submits that public notices as required under the law were issued in the matter and further, compensation has been awarded in favour of the owners, whose names are reflected in the revenue records. She submits that there is no credible material on record with regard to the precise status of the petitioner qua the property in question. She submits that in any case the impugned award cannot be set aside merely on the ground of some dispute between the parties as to who is entitled to receive the compensation in respect of the acquired property. Ms Shastri also submits that this is an acquisition under the Maharashtra Regional & Town Planning Act, 1966 (MRTP), which is a complete Code as held by the Full Bench of this Court in ***Mehtab Laiq Ahmed Shaikh & Anr. vs. State of Maharashtra***¹. She therefore submits that the impugned award warrants

1 Writ Petition No. 2827 of 2014 decided on 13.10.2017

no interference on the basis of any provisions of the 1894 Act or the 2013 Act, which in any case, stands duly complied with in the facts and circumstances of the present case.

6] We have duly considered the rival contentions and also perused the material on record. We are satisfied that no case has been made out to interfere with the impugned order on the basis of the grounds urged by Mr. Soni, learned counsel for the petitioner.

7] This is a case of acquisition of property for the public purpose of recreation, in terms of a reservation under section 126 of the MRTP. Quite recently, the Full Bench of this Court, had the occasion to consider the issue as to whether the provisions of section 24(2) of the 2013 Act regards lapsing of acquisition apply to the acquisition proceedings initiated in terms of sections 125 to 127 of the MRTP. The Full Bench after, examining the scheme, scope and import of the two legislations has held that the provisions in section 24(2) the 2013 Act cannot be made applicable to acquisition initiated under sections 125 to 127 of the MRTP. *Prima facie* therefore, all the provisions of either the 1894 Act (wherever applicable) or the 2013 Act cannot be mechanically made applicable to the proceedings for acquisition under sections 125 to 127 of the MRTP. In this case, Mr. Soni was unable to point out any precise breach in the context of the provisions of the 2013 Act. The writ petition, makes reference to breach of section 9 of the 1894 Act, which provision, is clearly not attracted to the facts and circumstances of the present case. There is accordingly no legal infirmity in the making of the impugned award.

8] As submitted by Ms Shastri, the compensation in this case, has

been awarded to the owners whose names are reflected in the revenue records. Assuming that there is some dispute in this regard, it is always open to the petitioner to take out appropriate proceedings to secure compensation or portion of compensation. However, this is not sufficient to set aside the impugned award and consequently the acquisition itself either on grounds of breach of statutory provisions or on the grounds of breach of principles of natural justice or fair play. This is not a case where the acquisition has been undertaken in some secretive manner. There was publication of notices as prescribed under the law. Merely on the ground that the petitioner, claims to have some leasehold rights to a portion of the property and on the said basis, has some claim to compensation, by itself, is not sufficient to set aside the impugned award or interfere with the acquisition, which is admittedly for a public purpose and in pursuance of reservation under the MRTP.

9] For the aforesaid reasons, we dismiss this petition. However, we leave it open to the petitioner to take out appropriate proceedings before the appropriate forum for pursuing his claim for compensation. We however clarify that we have not examined the issue as to whether the petitioner is indeed entitled to any compensation and such issue is left to be determined by the appropriate authority, in case, the petitioner takes out appropriate proceedings in that regard.

10] In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)

CHIEF JUSTICE